

DATE: August 23, 2002

FILE REF: NR 135/NMAC

TO: Nonmetallic Mining Advisory Committee

FROM: Tom Portle

SUBJECT: Minutes of August 1, 2002 Nonmetallic Mining Advisory Committee Meeting

Following is my report on the main points from the meeting of the NR 135 Nonmetallic Mining Advisory Committee ["NMAC"], held on August 1, 2002 from 10-4 at the Wisconsin Highway Patrol District One Headquarters Building in DeForest, WI.

NMAC members present: Bruce Brown, Jim Burgener, Mike Erickson, Marty Lehman, Ed Reesman, & Gary Werner

Sitting in for NMAC member: Pamela Andros, Dane County (for Jennifer Sundstrom)

NMAC members not present: Jennifer Sunstrom; Sue Courter; Ron Garrison

WDNR Staff Present: Dan Graff, Ryan Jakubowski, John Sissons and Tom Portle

Others Present: Eric Fowl, East Central WI Regional Planning Commission; Sheryl Albers, Wisconsin State Legislator; Pat Stevens Wisconsin Transportation Builders Association; Bibb Edwards, Rock County; Fay Arneson, Walworth County; Beth Klotz, Jefferson County; Rhonda Sukys, Jefferson County; John Burtosek, NEA; Kirsten Jurcek; Clint Weninger, Payne and Dolan; Dick Marino, The Kramer Co.; Jennifer Schuetz, The Kramer Co.; Philip Schmitz, ECCI.

Main points of discussion and any decisions or necessary "follow-up activities" follow:
(Agenda items in ► **bold**)

► **MOTIONS APPROVED:**

► *A motion was passed affirming the need for the Department to appoint to the NMAC a representative from the County Land Conservationists (a statewide organization representing staff who, in administer or provide technical support in about 50% of the current programs) on the NMAC, preferably by filling the first vacant seat.*

► A motion was passed that *advised the DNR that the NMAC strongly recommends the DNR embark on an outreach initiative to address many of the communication issues that are perceived to be developing around program implementation.* This is important as this is a critical time as because mine operators and regulatory authorities are working through the important details of what is required for approvable reclamation plans and financial assurance, and the training should supplement and build on Department written guidance on these topics. Note: These implementation issues were discussed at length during the August 1, 2002 NMAC meeting was passed.

► A motion was passed advising the DNR (who are charged with setting the agenda and taking care of meeting logistics) *to increase the opportunity for public input as part of each future NMAC meeting.* One directive is to schedule time on the agenda of each future meeting to allow for "public input" (including a specified time limit per presenter). This motion also *directs the Department to provide wider distribution of the NMAC meeting time, place and proposed agenda to the public, through posting on the Department's website, nonmetallic mailing lists and communications with NR 135 regulatory authorities.*

► **"Around-the-table"** - Overall, members felt the program was working well; still some lack of consistency in implementation and in code interpretation issues; better communication ought to be fostered.

Ed - pretty smooth; more consistency needed; some regulatory authorities (RA's) have trouble keeping Zoning and Reclamation separate; get minutes on Website

Marty - entire spectrum

Mike - Concerns around the financial assurance (FA) issue and guidance; discussions with APW; don't make the committee bigger or unduly expand the input; let non-members comment in a structured way; don't let this get too complex.

Pam Andros (sitting in for Jennifer) - Life-of-mine v. one acre; not enough outreach/support by DNR; Lack of I & E on Registration - needs something to give public; "not good government" (also see comments in attachment 1); FA issues - Must allow flexibility for variability among counties with regard to FA etc.

Gary Werner - Some reclamation plans end up being at odds with county-supported values such as "open space"; "Important Resources to be Protected"; Connection of "Smart Growth" to Mine proposals and Registration

-

Jim Burgener - some planners are tempted to avoid the tough ones like mines and landfills altogether or tweak the system so as to divert them to another jurisdiction.

Bruce Brown - a lot of feedback; "the devil is in the details"; let the voices in the room be heard!

Operator/Administrator/Consultant Feedback

Ed and Pam invited feedback from others present. Some highlights are found below and a more detailed documentation of their comments is provided in Attachment 1.

Non-NMAC

Pat Stevens - this is much more formal; less input from others "outside the circle"

Eric Fowle - wants to be a member; thinks a private consulting representative ought to be added as well

Legislator Sheryl Albers - Soil scrape issue - Wants NMAC to make a determination on the "soil scrape" issue ; DATACP and FA; Mark Patronskey worked on a comparison of FA issues in conjunction with cheese industry v. Nonmetallic mining reclamation to see if anything could be learned by analogy.

- should quantify cost increases due to NR 135 (and FA) and make 'em available; put it on the Web

► Reappointment/recruitment for NMAC members

Reappointment letters were given at the meeting and Ron Garrison's was sent out. We had a discussion where it was clear that the NMAC felt that more representation from regulatory personnel was necessary and it was recommended that we attempt to get future representation from County Land Conservationists (also see above motion).

► Follow-up report on Fees - Ryan Jakubowski, John Sissons & Tom

Update on development of DNR tracking systems- handouts with current data were provided to all to support a status report on compliance with fee submittal and annual reporting requirements (follows electronic submittal capability addressed at last meeting). It was discussed how DNR would follow-up to gain greater compliance and how such data might be used as a criterion in selecting entities for the first round of audits.

Tom Portle provided a "heads-up" on the need to prepare and present a report on the sufficiency, adequacy, appropriateness of fees to the Natural Resource Board in fall of 2003. Tom explained how the to DNR Program reviews (Audits) audit process would be important in generating the data necessary to base the report on. He also gave the timetable and the status (undergoing development with nonmetallic mining reclamation subteam at the current time.

► **Registration of Land Containing Nonmetallic Mineral Deposits** **Dan**

- presentation to registrars
- status of form and I & E materials (especially aimed at landowners who wish to register)

► **Financial Assurance guidance** completed and now available for use; on website

Tom

- Handed out and explained

► **Feedback** of this meeting - NMAC members provided positive feedback. Among the comments: "good meeting" ... "good to hear from the RAs and the operators" ... "productive" ... "get a facilitator"

► **Next Meeting** - The NMAC felt that it would be good to meet again late October or in early November (November 7 tentative date set). All agreed that the next meeting should again be held in DeForest, WI.

Agenda Items for future meeting:

- Status of Known and Identifiable Future Deposits connecting registration to planning and Smart Growth with a Bruce Brown demonstration of computer tools that may be employed to facilitate above
- WisDOT at next meeting - possibly presenting something
- Further reporting on fees & audits
- Topsoil scrapes
- Report on increasing outreach actions

EMERGING ISSUE:

1 acre v. life-of-the-mine (Farmers or super-small mines that would never disturb more than a few acres and always reclaim right after the disturbance - is it fair to make them permit/bond/plan/fees etc.?)

ATTACHMENT 1

FEEDBACK FROM OPERATORS

- Lack of consistency
- Some arbitrary calls, some calls that are not supported by statute or rules
- Some RA's flat out require a letter of credit and no form of FA!
- inappropriately move it what ought to be "operational issues"

Dick Marino - wants more "forceful leadership" from the DNR

- Frustrated when even after a DNR letter advising the County on the inappropriateness of their interpretation of NR 135 the county still elects to take that position.

-
- Some concern that some counties view this and exploit the rule as an opportunity to "have more power" over the operators

FEEDBACK FROM RA's

- One acre exemption & life of mine; concern that a string of near one acre sites (with immediate reclamation) would tax RAs because it takes time to inspect these and there is no cost recovery due to no fees if exempt
- Answer shopping among operators and comparing counties
- Pam Andros - little to no outreach or technical support on this new program from the DNR; Speaks to the consistency versus flexibility dilemma - "a classic"; Dane County costs are running way higher than revenue collection.
- Have a way to share the experience - answers to common questions etc. with all concerned.
- Jim Burgener - Lets get "program guidance" accessible to everyone and not repeat errors or misinterpretations, (get consistent answers to the same questions) and avoid surplus confusion

FEEDBACK FROM CONSULTANTS

- Echo much of what was said above
- Frustration: very irregular and inconsistent regulation translates into more costs that are incurred by operators and lack of efficiency.
- One of the biggest areas of concern are those counties that don't "give a damn" about the program - obviously they can't be much help to operators.
- Bruce Brown asks - how do we deal with "bad actor" counties?
- Someone said many are merely confused... in any event what do we do to provide more support/outreach during this critical time
- Kirsten- there's probably 30 - 130 questions that need to be answered and know to allow consistent programs

IDEAS FOR BETTER COMMUNICATION:

- NMAC agenda and contacts on DNR website; Pam - get minutes on Website
- Some kind of collection of answers to implementation questions/ policies etc. Newsletter
- Outreach - Kirsten suggested a Statewide VideoConference